

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13821, of Frank R. Gailor, as amended, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a warehouse to the offices of a non-profit organization, second, third and part of the ground floor and under Paragraph 8207.11 for a variance from the prohibition against making structural changes to permit the installation of an elevator (Sub-paragraph 7106.121) in an R-4 District at the premises 218 D Street, S.E., (Square 763, Lot 2).

HEARING DATES: September 15, and 29, 1982
DECISION DATE: October 6, 1982

FINDINGS OF FACT:

1. The subject application was scheduled originally for the public hearing of September 15, 1982. Because of the lateness of the hour, the Chairman continued the hearing to September 29, 1982.

2. The application as advertised originally was for a special exception under Sub-section 7104.2 to change a non-conforming use from a warehouse to general or SP type offices, second, third and part of the ground floor or, in the alternative a special exception under Paragraph 3101.412 to use the premises for the offices of non-profit organizations and under Paragraph 8207.11 for a variance from the prohibition against making structural changes to permit the installation of an elevator.

3. The Board, at the public hearing of September 29, 1982, permitted the applicant to amend the application. The applicant no longer seeks to use the subject premises as general office use or all the permitted SP type office uses. The applicant has restricted the proposed uses to the offices of non-profit organizations only. The applicant still seeks a variance from Sub-paragraph 7106.121 to install an elevator.

4. The subject property is located on the north side of D Street between 2nd and 3rd Streets, S.E. and is known as premises 218 D Street, S.E. It is in an R-4 District.

5. The site is generally rectangular in shape measuring 95.58 feet in depth on the west side, 73.79 feet

in depth on the east side and 54.79 feet of frontage on D Street. The site contains approximately 4,692 square feet.

6. The site is improved with a three story brick warehouse constructed in 1892. The structure occupies 100 percent of the lot and contains 14,250 square feet of floor area.

7. The subject building is joined on the west by a two-story brick structure, formerly occupied by a moving and storage company. By Order No. 12725 dated November 28, 1979, the Board granted permission to establish a squash court facility therein. Adjoining the subject building on the east is a two story brick structure occupied by an American Legion Post. A Pepco substation is the only remaining structure on the north side of the 200 block of D Street which fronts on D Street. The substation is located west of the squash court facility and separated from it by a fifteen foot public alley. A thirty foot public alley abuts the site at the rear. No residential structures front on the 200 block of D Street. There is a row dwelling at 326 2nd Street, the side of which faces D Street west of the Pepco substation. The remainder of the subject Square 763 consists of primarily residential uses and structures generally consistent with the requirements of the R-4 District with the exception of two apartment houses.

8. The vicinity of the subject site is characterized by a variety of uses. Commercial areas zoned C-2-A are located one and a half blocks to the north along Pennsylvania Avenue and one and a half blocks to the southwest along 1st Street. The Madison Library of the Library of Congress is located one block northwest of the site, as is the Cannon House Office Building. In general, the areas north and west of the site are predominantly commercial and governmental uses. The areas south and east of the site are predominantly residentially. Folger Park is on the south side of the 200 block of D Street. The Brent Public School is southeast of the subject property in Square 792, directly across from the subject site. The former location of Providence Hospital is directly south of Folger Park. The hospital site was acquired by the Architect of the Capitol in 1973 for future use.

9. The applicant is seeking a special exception to convert the subject structure from a warehouse storage facility to offices for non-profit organizations only. The ground floor parking area is not a part of this application and will remain as a parking facility for the adjacent squash court, as required by BZA Order No. 12725. The remainder of the building, including a small part of the ground floor, plus the second and third floors, comprising approximately 10,000 square feet, will be leased to the Northeast-Midwest Institute. The Institute was founded in

1977 as a non-profit, research and technical assistance organization providing service on a range of public policy issues related to economic and social problems of the older, urbanized industrial areas of the United States.

10. The applicant proposes to restore the building's facade by repointing exterior brick and providing new windows which are compatible with the building's architectural character. Exterior woodwork will be repaired or replicated. New landscaping will be provided. Repairs and rehabilitation of the interior are also planned.

11. As a structural alteration, in order to comply with the Architectural Barriers Act of 1980, a new interior elevator is to replace an existing inoperative hand operated freight elevator.

12. The first floor will include a reception area and parking for the adjoining squash club. No off-street parking for the proposed office use is provided. The second and third floors will contain office space.

13. The Northeast-Midwest Institute presently occupies office space in House Annex Number 2 at 3rd and D Streets, S.W. by invitation of members of the U.S. Congress. The House Administration Committee changed its rules regarding outside-funded research groups located in the House Annex Number 2 Building. The change will prevent the Institute from remaining there after December 31, 1982.

14. The Northeast-Midwest Institute will be the master tenant of the building. It will occupy approximately one-third of the available floor space. The remaining two-thirds will be leased to similar non-profit organizations. The Institute has a five year lease with three options to renew, each for five years.

15. The subject structure has a ninety year history of continuous commercial and industrial uses. The structure was originally built as a carriage repository for a funeral home, and was built after the adjacent American Legion Post to the east and the Squash Club to the west. It has been used to house a blacksmith shop, auto body shop and storage facility for cars, dairy delivery vehicles and oil and petroleum products. Since approximately 1918, the major use of the building has been as a moving and warehouse storage/truck terminal facility. Up until the mid 1970's, the warehouse was in operation for up to twenty-four hours per day, seven days per week. It regularly received deliveries early in the morning and deliveries were made to the building by way of the alley system at the rear.

16. The subject structure was designed for institutional/commercial use during a period when grandiose

buildings were designed to face onto parks and squares. Its commercial character is evidenced by the large carriage entranceway and open loft space throughout the structure. The structure is of late Victorian, Italianate design with attractive brick detail and strong vertical Victorian windows.

17. The only alterations to the structure involve installation of the elevator, fire code ceilings on the ground floor, a stairwell, a fire stair extending to the third floor and a fire escape at the rear.

18. In order to continue the use of the subject premises as a warehouse storage facility, the structure would have to be improved to meet the D.C. Code standards, mainly involving extensive fire proofing. Continuing the warehouse storage facility will also result in further deterioration of the structure.

19. The subject site is located in the Capitol Hill Historic District and exterior alterations would be subject to review by the Joint Committee on Landmarks.

20. The Heritage Conservation and Recreation Service of the U.S. Department of the Interior has certified that the building contributes to the significance of the Capitol Hill Historic District. The structure is one of the few historic building on Capitol Hill which was originally designed as a commercial building and is the only one of those buildings of its architectural style.

21. The subject property was also the subject matter of BZA Application No. 13303, which the Board denied by Order dated May 12, 1981. The present application is substantially different from the previous application No. 13303. The present application seeks a more limited type of use than the previous application which proposed general office use. The present application requests no extension of a non-conforming use, there will be no exterior changes to the structure and no alteration of the previously approved parking plan for the first floor.

22. The Zoning Administrator has determined that no parking spaces are required for the proposed use.

23. Forty to forty-five employees are anticipated to work in the building, with hours from 8:00 or 8:15 A.M. to 5:00 or 5:15 P.M. with flexible hours as late as 6:00 to 6:15 P.M.

24. The applicant conducted a survey of all employees of the non-profit organizations likely to lease space at the subject building to determine their mode of transportation to work. The results established that a majority came by

foot or public transportation. Those who drove presently park at Congressional outdoor parking lots.

25. The U.S. House Parking Commission staff confirmed that employees could continue to use Congressional parking facilities. Formal stickers have already been issued to most of the persons who drive in the organizations that are potential occupants of the subject building. Those who do not have such stickers are in the process of obtaining them. The spaces being obtained are from individual members of the House who have the freedom to allocate the spaces assigned to them.

26. The applicant stated that if Congressional spaces were not available for employees who drove, the Institute would lease commercial parking spaces for use by employees. Public transportation or shuttle bus service presently in use would bring employees to the site.

27. The applicant's parking survey demonstrates that there is a supply of short-term parking spaces available in the area to meet the need of visitors.

28. The peak parking demand for non-profit organization office use will not coincide with peak residential parking demand. Existing on-street parking is adequate to meet the needs of general non-profit organizations whether or not they have Congressional parking privileges.

29. The Capitol South Metrorail station is located within two blocks of the subject site at First and C Streets, S.E. There are many Metrobus routes near the site.

30. Sub-section 7104.2 of the Regulations permits the change of one non-conforming use to another non-conforming use, provided the proposed use is permitted in the most restrictive district in which the existing non-conforming use is permitted. A warehouse moving and storage facility is first permitted in the C-M-1 District, pursuant to Paragraph 6101.35. An office of a non-profit organization is first permitted in the SP District.

31. Section 7109 requires that the Board find that the new use will be either a neighborhood facility, or else if not a neighborhood facility, then the type of use which will not be objectionable. The applicant argued that a dominant characteristic of the neighborhood is its close proximity to Congress, the Capitol and the several congressional office buildings. Many people living in the residential neighborhood work in jobs connected to the Congress, including Congressmen and staff members. The Institute, and the other anticipated lessees, are research organizations which serve the needs of Congress and the congressional community. The applicant testified that the Institute and

the other anticipated lessees will also serve the needs of the residential neighborhood in several ways. The Institute's representative testified that the Institute will offer its conference room for use by bona fide neighborhood organizations, and in conjunction will make available zerox and typing facilities. In addition, he testified that, as a research organization, the Institute will make available its technical expertise to individuals and groups interested in small business development, energy conservation, building rehabilitation and other topics of interest. The Board finds that the proposed use is not a neighborhood facility, as that term is contemplated in the Zoning Regulations. The Congress, the Capitol and their associated institutions are national in scope, not neighborhood.

32. The Board finds that the intensity of use will be far less under this proposal than under the previous warehouse use. There will be no employee vehicles brought into the neighborhood because of the availability of Congressional parking facilities located a short distance away, as well as alternative commercial parking facilities if the Congressional facilities become unavailable to the employees in the structure and because of the abundance of public transportation to the site. Based on surveys and studies presented to the Board, few visitors are expected to arrive by car, and short-term parking is available in unrestricted spaces, and in two-hour metered and residential permit spaces provided on the street.

33. The proposed use will not adversely affect the present character or future development of the neighborhood in accordance with the Regulations, and the comprehensive plan for the District of Columbia. The subject structure, originally built for commercial use, predates the present Zoning Regulations by almost sixty-five years. The commercial structures on either side of the subject structure are even older. These buildings also predate the majority of the row houses in the area. Adjacent to the squash club is a PEPCO substation. The immediate block is therefore characterized by non-residential uses. These non-residential uses have long been a part of the character of the neighborhood. Approval of the proposed use will help to stabilize the neighborhood and insure that the future use of this structure is more compatible with the Capitol Hill area than the previous more intensive industrial uses, which could continue as of right in the structure. The presently vacant structure, which dominates the north side of Folger Park, will be restored to its historic grandeur and will be recycled for a practical use which is compatible with the structure and the surrounding neighborhood.

34. The subject site will be used in accordance with the standards set forth in Sub-section 6101.6. No sound will be inherently and recurrently generated from the

structure other than that which normally emanates from a 10,000 square foot structure used for offices. In any event, the noise level will be much lower than that generated by use of the structure as of right for warehouse moving and storage purposes. No smoke, odorous gases, steam, noxious, toxic or corrosive fumes and gases, cinders, dust, flyash, direct or reflected glare or heat, or ground vibration will be generated from this proposed use.

35. The only sign on the building will be a brass plaque of the type normally used on SP-type non-profit offices.

36. The proposed use will not generate any deleterious external effects. There will be no noise, vibration, smoke, etc. emanating from the structure, as referenced above. The Board therefore finds no necessity for any screening.

37. The building, built in 1892, was originally equipped with a hand operated freight elevator in the rear of the structure to accomodate deliveries arriving at the loading dock in the rear. The elevator is presently unsuitable for any type of use and does not meet basic code standards. The Board finds that the existence of this structure in this condition on the property presents an exceptional situation or condition.

38. Strict application of the regulations would not allow the construction of the proposed elevator. Any future use of this structure must be in compliance with the Architectural Barriers Act of 1980 and Section 1500 of the D.C. Building Code, which require handicapped access. The old elevator cannot be used for this purpose and cannot be repaired or modernized to serve this purpose. The installation of a new elevator, just off the proposed lobby on the first floor in the front of the building, will provide access to the second and third floors by all persons, including the handicapped.

39. The proposed elevator will be a hydraulic elevator. Some excavation will be required in the existing floor to accommodate the elevator machinery. However, there will be no roof structure or other exterior machinery in conjunction with this elevator. Neither the elevator nor its machinery will be visible from the outside of the structure.

40. The Office of Planning and Development, by report dated September 1, 1982, recommended denial of the original application, stating that the proposed use would not be a neighborhood facility and would be objectionable and thus contrary to the provisions of Section 7109. Based upon the amended application, the OPD by addendum dated September 14, 1982, to the report of September 1, recommended approval of the amended application. The OPD report noted that the

modified relief was more in conformance with the neighborhood uses. The OPD recommended approval with the condition that the use be limited to the non-profit organization specifically identified by the application. The OPD reported that the use of the premises by non-profit organizations will not be objectionable to the neighborhood. The OPD did not foresee that the design, architectural features, nature of illumination amount of noise or other design features would cause undue adverse impacts on surrounding properties. The Board concurs with the findings of the OPD.

41. Advisory Neighborhood Commission 6B, by letter dated September 13, 1982, recommended support of the amended application for use by non-profit organizations only and listed the following reasons for its support:

- a. A non-profit organization use is a less intensive use than present warehouse uses.
- b. The proposed use is in conformity with the immediate surrounding neighborhood.
- c. The proposed use will not adversely affect the residential character of the neighborhood.
- d. There will be a negligible increase in traffic and lack of parking.
- e. The proposed use of the site is an acceptable use since the structure was built for commercial purposes and has been used continually since 1892.

The Board concurs in the ANC recommendation.

42. Three residents in the immediate area of the site testified in support of the application stating as a basis that: (a) the proposed use is less intensive and disruptive; (b) it puts to use a vandalized and deteriorating structure; (c) if the structure were developed for residential purposes, it would add to the already difficult parking situation in the neighborhood; (d) the propose use would bring persons into the community during the daytime which would assist in deterring crime; and (e) the north side of the 200 block of D Street is not a suitable residential environment.

43. A petition in support signed by fifty-six residents in the neighborhood was entered into the record. Letters in support of the application were received into the record from two additional residents and four members of the U.S. Congress.

44. The Capitol Hill Restoration Society and six residents of neighboring properties appeared in opposition to the application on the following grounds:

- a. The application was improperly handled to the extent that it severely hampered community consideration of the issues. The present request is substantially different than the original public advertisement. The application should be rejected and a new application advertised.
- b. While office use is less obnoxious than a warehouse, the request is not consistent with the residential neighborhood under the R-4 District, and does not meet the standards for a special exception.
- c. The proposed use will not serve the neighborhood.
- d. The proposed use will aggravate increasing parking, traffic and pollution problems in the area.
- e. The proposed use can only be characterized as an office use and would result in commercial encroachment into the residential area.
- f. Approval of the request will set a precedent for further commercial encroachment into the residential community.
- g. The request does not meet the standards under Section 7109.

45. There were seven letters in opposition received into the record from neighborhood residents including one Congressman.

46. The Board in response to the issues raised by the Capitol Hill Restoration Society and those residents in opposition finds that:

- a. As to notice, the amended application is not substantially different from the application as originally advertised. The basic relief requested in both instances was the change of a non-conforming use from warehouses to offices. The amendment from general offices to a more restricted SP-type office use, namely, offices of non-profit organizations, resulted from the applicant's meetings with the ANC. The discussions were on-going discussions. The discussions provided further notice to all interested persons. Also, the Board has the

authority to grant permission to applicants to amend their applications. The Board favors amendments where less relief from the Zoning Regulations is sought and which flow from cooperation between the applicant and the community.

- b. The Board, for reasons discussed below, finds that the applicant has met his burden of proof and that the special exception can be granted. Under the special exception relief the applicant need not establish that the proposed use is a neighborhood facility. It suffices that the use not be objectionable. The application under the special exception relief has no burden to establish that the subject site cannot be used for residential purposes or other R-4 uses.
- c. No off-street parking spaces are required for the proposed use. All employees who commute by car will use Congressional parking facilities located within close proximity to the subject site. If such spaces cease to be available, then the employees will use existing commercial lots within the Capitol Hill area in conjunction with shuttle service or public transportation. Adequate short-term parking spaces are available along nearby streets for visitors. The peak demands for residential use will not coincide with peak demand for non-profit office use. Thus, the impact of traffic generation and pollution will be negligible.
- d. The subject structure was built in 1892 as a commercial building. It has been used as a commercial building since its construction and still holds a valid certificate of occupancy for a storage and warehouse use. The permitted uses are by no means an encroachment into a neighborhood. The argument of commercial encroachment is not a valid issue since the structure may legitimately continue as a commercial/warehouse use. The proposed use while an office use is less intense than the matter-of-right storage warehouse use and would have less impact on the community.
- e. The proposed use will not set a precedent. The Board has consistently held that it will determine each application on its own merits.
- f. The Board for reasons stated in its conclusions finds that the applicant meets the requirements of Sub-section 7104.2 and Section 7109 of the Zoning Regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires compliance with the requirements of Sub-section 7104.2 of the Zoning Regulations and that the relief can be granted under Sub-section 8207.2 without an adverse impact on the use of neighboring property, and that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Board concludes that the applicant has met the requirements of Sub-sections 7104.2 and 8207.2 and Section 7109 of the Zoning Regulations. The proposed use while not a neighborhood facility in the context of the Zoning Regulations will not be objectionable. The proposed use will not adversely affect the present character or future development of the neighborhood. The proposed use will be in accordance with the standards set forth in Sub-section 6101.6 of the Regulations regarding external effects. In addition, the Board has considered the general character of uses and structures within 300 feet of the structure, the arrangement, design and architectural features of the structure, the proposed sign, the potential for external deleterious effects, the necessity for protective screening, and the proposed parking and loading arrangements and concludes that the proposal will not adversely affect the use of neighboring property and will be in accordance with the intent, purpose and integrity of the Regulations.

The Board also concludes that the applicant has met the criteria for variance relief for the proposed elevator. As set forth in Finding Nos. 37 through 39, the property is affected by an exceptional or unusual situation or condition, in that the existing elevator for the three story structure does not meet Code standards. Strict application of the regulations would result in no permitted use of the property, in that any use of the property requires compliance with the Architectural Barriers Act of 1980, and Article 1500 of the Building Code, both of which require handicapped access to the building. Finally, structural alterations to accommodate the proposed elevator will not adversely affect the public good and will not impair the intent, purpose or integrity of the Zoning Regulations, because there will be no exterior alterations of any kind to the building to accommodate the elevator.


The Board concludes that it has accorded the written ANC report the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Use of the premises shall be limited to offices of non-profit organizations.
2. The number of employees in the subject building shall be limited to a maximum of fifty.

VOTE: 3-2 (Walter B. Lewis, William F. McIntosh and Douglas J. Patton to GRANT; Connie Fortune and Charles R. Norris OPPOSED to the Motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: DEC 15 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

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